

BEFORE THE ETHICS COMMISSION
FOR THE STATE OF TENNESSEE
AT NASHVILLE

IN RE: Tyco

Respondent.

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No. 2008-102

CONDITIONAL ASSESSMENT ORDER

This matter came on to be heard informally by the Commission on October 28, 2008 at its regularly scheduled meetings. Commission staff presented documentation indicating that Respondent failed to timely pay employer registration fees as required by Tenn. Code Ann. § 3-6-302(e).

FINDINGS OF FACT

Documentation on file with the Commission shows, and the Commission finds, as follows:

1. Registration. Respondent Tyco, registered as an employer of a lobbyist on January 7, 2008. Tyco retains seven (7) lobbyists.
2. Employer Registration Fee. Tyco had a duty under the Tennessee Comprehensive Governmental Ethics Reform Act of 2006 ("Act") to pay an employer registration fee for each of its seven (7) lobbyists retained no later than thirty days from registering.
 - a. As of February 8, 2008, Tyco had not paid its employer registration fees.
 - b. On July 8, 2008, an email was sent to Tyco informing it of its failure to pay and the possible results of this action.
3. Notice of violation. On August 25, 2008, the Commission sent Tyco by certified mail, return receipt requested, a notice that the Commission intended to consider at its October 28, 2008 meeting assessment of civil penalties against Tyco for failure to timely pay employer registration fees required by Tenn. Code Ann. § 3-6-302(e).
 - a. The notice set forth the allegation, the maximum amount of civil penalties that could be assessed, the date, place, and time of the meeting, and Tyco's opportunity to participate in an informal proceeding at the meeting either by appearing personally or by submitting a sworn statement and documents.
 - b. In response to the notice, Tyco paid its registration fees on September 4, 2008.

4. Show Cause Hearing.

- a. On October 7, 2008, Tyco filed with the Commission a letter apologizing for the failure to timely pay employer registration fees and confirming a desire to appear at the show cause hearing.
- b. Tyco was represented by Ken Duncan, Area Sales Manager, at the October 28, 2008 show cause hearing.

CONCLUSIONS OF LAW

The Commission concludes that Tyco had an obligation under the Act to timely pay employer registration fees required by Tenn. Code Ann. § 3-6-302(e), failed to do so and had no "good cause" for such failure to timely pay. The Act authorizes the Commission to administratively assess civil penalties in an amount up to seven hundred fifty dollars (\$750.00) per violation, if an employer fails to timely pay, without good cause. Tenn. Code Ann. § 3-6-306 (a)(1)(iii).

The Commission considers the complete failure to respond to the warning and notice concerning the failure to timely pay to be significant. The Commission has taken steps through training, website postings, and notices to help employers of lobbyist to come into compliance with the Act. More than a year and a half has passed since the filing requirements of the Act became effective. The Commission finds that the Tyco did promptly pay its fees upon receipt of the Show Cause Notice and also sent a notarized letter of intent from its Area Manager. Accordingly, the Commission finds that Tyco should be assessed a civil penalty of four hundred dollars (\$400.00) per violation for a total of two thousand eight hundred dollars (\$2800.00).

This assessment cannot become final until after respondent has been afforded an opportunity for a notice and a hearing. Tenn. Code Ann. § 3-6-107(8). Respondent's failure to participate in the informal assessment process is without prejudice to its rights to a contested case hearing under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101—4-5-325.

CONDITIONAL ORDER

It is therefore ORDERED that a civil penalty in the amount of two thousand eight hundred dollars (\$2800.00) is assessed against Tyco for failure to timely pay employer registration fees.

It is further ORDERED that the Executive Director shall issue this order and file it in the Commission's offices.

It is FURTHER ORDERED that this order shall not become final if respondent files a timely request for reconsideration of petition for a contested case hearing.

It is further ORDERED that the Executive Director shall cause to be provided to the respondent, by either personal service, certified mail return receipt requested, or overnight delivery, a copy of this order, and notice of the following:

Respondent's right to seek reconsideration of this order by filing with the Commission, within fourteen (14) days of this order, a written request for reconsideration in the form set forth in the notice;

Respondent's right to initiate a contested case proceeding by filing with the Commission, within thirty (30) days of this order, a petition for a contested case hearing in the form set forth in the notice; and

That in the event of failure to timely file a request for reconsideration or a petition for a contested case hearing the order shall become final and may form the basis for legal action to collect the civil penalty.

SO ORDERED.

Issued this 2nd day of December, 2008

TENNESSEE ETHICS COMMISSION

By: 
Bruce A. Androphy,
Executive Director